

1 MICHAEL KAUFMAN (SBN 254575)
mkaufman@aclusocal.org
2 ACLU FOUNDATION OF SOUTHERN CALIFORNIA
1313 West 8th Street
3 Los Angeles, California 90017
Telephone: (213) 977-5232
4 Facsimile: (213) 915-0219

5 *Attorneys for Plaintiffs-Petitioners*

6 *Additional Counsel for Plaintiffs*
7 *and Defendants on Following Page*
8
9

10 **UNITED STATES DISTRICT COURT**
CENTRAL DISTRICT OF CALIFORNIA

11 XOCHITL HERNANDEZ,
12 CESAR MATIAS, for themselves
13 and on behalf of a certified class
of similarly situated individuals,

14 *Plaintiffs-Petitioners,*

15 v.

16 MERRICK GARLAND, U.S.
17 Attorney General, et al.,

18 *Defendants-Respondents.*
19
20
21
22
23
24
25
26
27
28

Case No. 5:16-00620-JGB-KK

**[PROPOSED] PRELIMINARY
APPROVAL OF SETTLEMENT
AGREEMENT**

Honorable Jesus G. Bernal

1 MICHAEL TAN (*pro hac vice*)
mtan@aclu.org
2 JUDY RABINOVITZ (*pro hac vice*)
JRabinovitz@aclu.org
3 AMERICAN CIVIL LIBERTIES FOUNDATION
IMMIGRANTS' RIGHTS PROJECT
4 125 Broad Street, 18th Floor
New York, New York 10004-2400
5 Telephone: (212) 549-2618
Facsimile: (212) 549-2654

6 STEPHEN KANG (SBN 292280)
skang@aclu.org
7 AMERICAN CIVIL LIBERTIES FOUNDATION
IMMIGRANTS' RIGHTS PROJECT
8 39 Drumm Street
San Francisco, California 94111
9 Telephone: (415) 343-0783
10 Facsimile: (415) 395-0950

11 DOUGLAS A. SMITH (SBN 290598)
dougsmith@mayerbrown.com
12 MAYER BROWN LLP
350 S. Grand Ave, 25th Floor
13 Los Angeles, California 90071
Telephone: (213) 229-9500
14 Facsimile: (213) 625-0248

15 MATTHEW E. SLOAN (SBN 165165)
matthew.sloan@skadden.com
16 ASHLEY PHILLIPS (SBN 318397)
ashley.phillips@skadden.com
17 WINSTON P. HSIAO (SBN 273638)
winston.hsiao@skadden.com
18 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
300 S. Grand Ave, Suite 3400
19 Los Angeles, California 90071
Telephone: (213) 687-5276
20 Facsimile: (213) 621-5276

21 *Attorneys for Plaintiffs-Petitioners*
22

23 BRIAN C. WARD (IL 6404236)
brian.c.ward@usdoj.gov
24 KATHERINE J. SHINNERS (DC 978141)
Katherine.J.Shinners@usdoj.gov
25 Senior Litigation Counsel
COURTNEY E. MORAN (CA 288394)
26 courtney.e.moran@usdoj.gov
OZLEM B. BARNARD (NY 4350583)
27 ozlem.b.barnard@usdoj.gov
DHRUMAN Y. SAMPAT (NJ 270892018)
28 dhruman.y.sampat@usdoj.gov

1 Trial Attorneys
2 U.S. Department of Justice
3 Office of Immigration Litigation
4 District Court Section
5 P.O. Box 868 Ben Franklin Station
6 Washington, DC 20044
7 Telephone: (202) 532-4023

8 *Attorneys for the Defendants-Respondents*

1 This matter having come before this Court on the parties' joint motion for
2 preliminary approval of the proposed settlement of the above-captioned class action
3 (the "Action") pursuant to the parties' Settlement Agreement, and having duly
4 considered the papers and arguments of counsel, the Court hereby finds and orders as
5 follows:

6 1. Unless defined herein, all defined terms in this Order shall have the
7 respective meanings set forth in the Agreement.

8 2. Pursuant to Federal Rule of Civil Procedure 23(b)(2), the Court conditionally
9 certifies, for settlement purposes only, the following Settlement Class:

10 All individuals who, during the period of this Agreement, are or will be
11 detained pursuant to 8 U.S.C. § 1226(a) in the Central District of
12 California and are found eligible for release on bond.

13 For purposes of settlement only, the Court finds that the prerequisites for a class
14 action under Fed. R. Civ. P. 23(a) and 23(b)(2) have been preliminarily satisfied for
15 the same reason as the Court found in its order granting Plaintiffs' Motion for Class
16 Certification, Dkt. No. 84.

17 3. The Court has conducted a preliminary evaluation of the Settlement
18 Agreement for fairness, adequacy and reasonableness. Based on this preliminary
19 evaluation, the Court finds that (i) there is cause to believe that the Agreement is fair,
20 reasonable and adequate and within the range of possible approval, (ii) the Agreement
21 has been negotiated in good faith at arm's-length between experienced attorneys
22 familiar with the legal and factual issues in the Action, and (iii) the notice of the
23 material terms of the Agreement to members of the Settlement Class for their
24 consideration and reaction is warranted. Therefore, the Court grants preliminary
25 approval of the Settlement Agreement.

26 4. On _____, 2021 at __: __ .m., or at such other date
27 and time later set by Court order, this Court will hold a hearing on the fairness,
28 adequacy and reasonableness of the Settlement Agreement (the "Fairness Hearing")

1 and will determine whether final approval of the Settlement Agreement should be
2 granted via entry of the Proposed Final Order Approving Settlement attached as
3 Exhibit 1 to the Settlement Agreement.

4 5. The Court approves the form and manner of giving direct notice to the
5 Settlement Class by: (1) posting the Notice to the Class and Settlement Agreement on
6 the EOIR and ACLU of Southern California websites; (2) distribution of the Notice to
7 the Class and this Settlement Agreement to the individuals and organizations on
8 EOIR's current List of Pro Bono Legal Service Providers in this District and the local
9 American Immigration Lawyers' Association listserv; and (3) posting of the Notice to
10 the Class in all housing units in detention facilities where Class Members are detained
11 in the District for longer than 72 hours, in an area prominently visible to immigration
12 detainees. The Notice to the Class will be posted/distributed by the parties within ten
13 (10) business days of the date of entry of this Preliminary Approval Order, and shall
14 remain posted, and shall be maintained or replaced with new copies as needed, until
15 the Court issues an order finally approving or rejecting the Agreement. The notice in
16 form, method and content complies with the requirements of Rule 23 and due process,
17 and constitutes the best notice practicable under the circumstances.

18 6. Any member of the Settlement Class may object to final approval of the
19 Agreement by submitting his or her objection ("Objection") to Class Counsel in
20 writing, via regular mail; provided, however, that all Objections must be received by
21 Class Counsel no later than twenty-one (21) days prior to the Fairness Hearing. Class
22 Counsel shall file any Objections with the Court no later than fourteen (14) days prior
23 to the Fairness Hearing and will forward copies of any Objections to Defendants'
24 counsel within five (5) business days of receipt. A Settlement Class member who
25 objects to the Settlement need not appear at the Fairness Hearing for his or her
26 objection to be considered by the Court; however, any additional papers, briefs,
27 pleadings, or other documents that any objector would like the Court to consider must
28 be filed with the Court (with a copy mailed to Class Counsel) or mailed to Class

1 Counsel no later than twenty-one (21) days prior to the final approval hearing. All
2 papers filed by an objector with the Court shall include the caption *Hernandez, et al.*
3 *v. Garland, et al.*, No. 5:16-cv-00620-JGB-KK, and provide: (i) the Class Member's
4 full name and current detention facility or address; (ii) a signed declaration that the
5 Class Member is a member of the Class; (iii) the specific grounds for the objection;
6 (iv) all documents or writings that the Class Member desires the Court to consider;
7 and (vii) a notice of intention (if any) to appear at the Fairness Hearing.

8 7. Any Class member who fails to object in the manner prescribed herein shall
9 be deemed to have waived his or her objections and forever be barred from making
10 any such objections in this Action. While the declaration described in subparagraph
11 5(ii) is prima facie evidence that the objector is a member of the Class, the parties may
12 take discovery regarding the matter, subject to Court approval. If an objector does not
13 submit his or her Objection in accordance with the deadline and procedure set forth in
14 the notice, and the Class member is not granted relief by the Court, the Class member
15 will be deemed to have waived his or her right to be heard at the Fairness Hearing.

16 8. The Settlement Agreement, and the proceedings and statements made
17 pursuant to the Settlement Agreement or papers filed relating to the approval of the
18 Settlement Agreement, and this Order, shall not be offered or received against any
19 party as evidence of, or construed as or deemed to be evidence of, any presumption,
20 concession, or admission by any of the parties of the truth or falsity of any fact, claim,
21 defense, or argument that was or could have been asserted in the Action, or any
22 admission of liability, negligence, fault, or wrongdoing by any party, or referred to in
23 any other way for any other reason as against the parties to the Settlement Agreement,
24 in any other civil, criminal, or administrative action or proceedings, other than in
25 proceedings to enforce the Settlement Agreement. Nothing contained herein, however,
26 shall be construed to prevent the parties from offering the Settlement Agreement into
27 evidence for the purposes of enforcement of the Settlement Agreement.

1 IT IS SO ORDERED.

2 Dated this ____th day of _____, 2021.

3
4
5 HONORABLE JESUS G. BERNAL
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28